

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

RICHARD I. PORCH, III,)
)
Plaintiff,)
)
VS.) No. 19-1004-JDT-cgc
)
QUALITY CORRECTIONAL HEALTH)
CARE, ET AL.,)
)
Defendants.)

ORDER DISMISSING COMPLAINT, GRANTING LEAVE TO AMEND
AND DENYING MOTION FOR APPOINTMENT OF COUNSEL

On January 4, 2019, Plaintiff Richard I. Porch, III, who is incarcerated at the Hardeman County Correctional Facility (HCCF) in Whiteville, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 and a motion to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) The Court issued an order on January 9, 2019, granting leave to proceed *in forma pauperis* and assessing the civil filing fee pursuant to the Prison Litigation Reform Act (PLRA), 28 U.S.C. §§ 1915(a)-(b). (ECF No. 4.) The Clerk shall record the Defendants as Quality Correctional Health Care, the Madison County Sheriff's Department, Nurse First Name Unknown (FNU) Franks, Nurse FNU Woods, Nurse FNU Brewer, Lieutenant FNU Balderamma, Sergeant FNU Long, and Madison County Sheriff John Mehr.

Porch alleges that he was an inmate at the Madison County Criminal Justice Complex (CJC) in Jackson, Tennessee, from May 16, 2018, through July 10, 2018, when he was transferred to HCCF. (ECF No. 1 at PageID 4.) He alleges that, during those two months, he suffered from

an inguinal hernia, which “worsened from a quarter sized bulge in my abdominal region that was manag[e]able with a hernia belt to a grapefruit sized mass in my scro[t]um, now requiring surgery and unretractable.” (*Id.*) Porch contends that his condition “was a direct result of the lack of proper medical attention and the Deliberate Indifference to my serious medical need by the defendants, Quality Correctional Health Care and Madison County Sheriff’s Dept.” (*Id.*)

Porch seeks an order requiring Quality Correctional Health Care and the CJC to provide proper medical care for inmates at the CJC. (*Id.*) He also seeks unspecified “[c]ompensation for pain and suffering.” (*Id.*)

The Court is required to screen prisoner complaints and to dismiss any complaint, or any portion thereof, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b); *see also* 28 U.S.C. § 1915(e)(2)(B).

In assessing whether the complaint in this case states a claim on which relief may be granted, the standards under Fed. R. Civ. P. 12(b)(6), as stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009), and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007), are applied. *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). The Court accepts the complaint’s “well-pleaded” factual allegations as true and then determines whether the allegations “plausibly suggest an entitlement to relief.”” *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681). Conclusory allegations “are not entitled to the assumption of truth,” and legal conclusions “must be supported by factual allegations.” *Iqbal*, 556 U.S. at 679. Although a complaint need only contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” Fed. R. Civ. P. 8(a)(2), Rule 8 nevertheless requires factual allegations to make

a “‘showing,’ rather than a blanket assertion, of entitlement to relief.” *Twombly*, 550 U.S. at 555 n.3.

“*Pro se* complaints are to be held ‘to less stringent standards than formal pleadings drafted by lawyers,’ and should therefore be liberally construed.” *Williams*, 631 F.3d at 383 (quoting *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004)). *Pro se* litigants, however, are not exempt from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *see also Brown v. Matauszak*, 415 F. App’x 608, 612, 613 (6th Cir. Jan. 31, 2011) (affirming dismissal of *pro se* complaint for failure to comply with “unique pleading requirements” and stating “a court cannot ‘create a claim which [a plaintiff] has not spelled out in his pleading’” (quoting *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975))).

Porch filed his complaint pursuant to 42 U.S.C. § 1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

To state a claim under § 1983, a plaintiff must allege two elements: (1) a deprivation of rights secured by the “Constitution and laws” of the United States (2) committed by a defendant acting under color of state law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970).

Porch’s allegations that he was denied proper medical care amount to a claim of deliberate indifference, which the Court reviews under the Eighth Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Porch refers to the Defendants only collectively and alleges that they showed “Deliberate Indifference to my serious medical need.” He does not specify any Defendant’s personal involvement in the alleged denial of adequate medical treatment or allege facts to support his conclusion that they violated his rights. Under even a liberal construction of his complaint,

Porch fails to state a claim against any Defendant. *See Iqbal*, 556 U.S. at 679; *see also Marcilis v. Twp. of Redford*, 693 F.3d 589, 596-97 (6th Cir. 2012) (quoting *Lanman v. Hinson*, 529 F.3d 673, 684 (6th Cir. 2008)) (affirming district court’s dismissal of complaint that “makes only categorical references to ‘Defendants’” and holding that the complaint failed to “‘allege, with particularity, facts that demonstrate what each defendant did to violate the asserted constitutional right’”); *Frazier v. Michigan*, 41 F. App’x 762, 764 (6th Cir. 2002) (affirming that, because Plaintiff “failed to allege with any degree of specificity which of the named defendants were personally involved in or responsible for each of the alleged violations of his federal rights,” the complaint failed to state a claim for relief).

Accordingly, Porch’s complaint is subject to dismissal in its entirety for failure to state a claim.

The Sixth Circuit has held that a district court may allow a prisoner to amend his complaint to avoid a *sua sponte* dismissal under the PLRA. *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013); *see also Brown v. R.I.*, 511 F. App’x 4, 5 (1st Cir. 2013) (per curiam) (“Ordinarily, before dismissal for failure to state a claim is ordered, some form of notice and an opportunity to cure the deficiencies in the complaint must be afforded.”). Leave to amend is not required where a deficiency cannot be cured. *Curley v. Perry*, 246 F.3d 1278, 1284 (10th Cir. 2001) (“We agree with the majority view that *sua sponte* dismissal of a meritless complaint that cannot be salvaged by amendment comports with due process and does not infringe the right of access to the courts.”). In this case, the Court finds that Porch should be given an opportunity to amend his complaint.

In conclusion, Porch’s complaint is DISMISSED for failure to state a claim on which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1). Leave to amend,

however, is GRANTED. Any amendment must be filed within twenty-one (21) days after the date of this order.

Porch is advised that an amended complaint will supersede the original complaint and must be complete in itself without reference to the prior pleadings. The text of the complaint must allege sufficient facts to support each claim without reference to any extraneous document. Any exhibits must be identified by number in the text of the amended complaint and must be attached to the complaint. All claims alleged in an amended complaint must arise from the facts alleged in the original complaint. Each claim for relief must be stated in a separate count and must identify each defendant sued in that count. If Porch fails to file an amended complaint within the time specified, the Court will assess a strike pursuant to 28 U.S.C. § 1915(g) and enter judgment.

Porch has also moved for the appointment of counsel. (ECF No. 5.) Because his complaint is still in the screening phase, and the Court has not yet directed that any Defendant should be served with process, his motion is premature. The motion is therefore DENIED without prejudice to refiling, if necessary, at a later, appropriate time.

IT IS SO ORDERED.

s/ James D. Todd
JAMES D. TODD
UNITED STATES DISTRICT JUDGE